Winnipeg

# Use of Consultants Audit

## Final Report
## June 2006

Audit Department

*Leaders in building public trust in civic government*

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# Executive Summary

The procurement of goods and services is a high profile and sensitive public process, complex in nature. Therefore, the City's procurement process must be open, accessible and transparent and must adhere to legal and legislative requirements. In addition, the procurement process must add value both to the City of Winnipeg in terms of quality and economy and to the business community in terms of opportunity and accessibility.

The City's use of consultant services has grown in recent years due, in part, to the downsizing of its permanent workforce and the number of infrastructure projects being undertaken. In 2000, the City spent approximately $18 million on external consultant services. By 2004, that number had grown to $39 million. The significant increase in dollars spent on consultants is due to expenditures for a few large infrastructure projects.

We recommended an audit of procurement and contract administration in our *2004-2006 Audit Plan*, communicated to Audit Committee in September 2004. We have divided this audit into two distinct projects, with the first project being an audit of the use of consultants. The objectives of the audit were as follows:

- To determine whether the risks associated with the use of consultants have been adequately identified and mitigated.
- To determine whether consultant services contracts were awarded in a fair and open manner at a reasonable cost.
- To evaluate whether the deliverables of the contracts met the original expectations of quality, price and timeliness.

In conducting our audit work, we relied upon extensive interviews and information, data and other documentary evidence provided to us internally and from other jurisdictions. Where appropriate, we have provided recommendations for improvement to the current processes and practices that affect the engagement and management of consultants. Our results are briefly summarized below:

## Significant Observations

The process to contract with a consultant within the City of Winnipeg is governed by the *Materials Management Policy,* adopted in March 2004 and its accompanying administrative directive (the *Directive*). A well designed policy helps to ensure that the City, while working in the litigious procurement environment, applies a transparent and consistent approach to the procurement of goods and services.

We found that the type of engagement that constitutes a 'consultant service' is not clearly understood by City staff, decision-makers and the public. Consultant services engagements as described in the *Directive* captures a broad scope of activity. In fact, approximately 72% of consultant services expenditures in 2000 to 2004 were paid to consulting engineers who planned, designed and acted as the contract administrators for various City capital projects. These engagements resulted in tangible improvements to the City's infrastructure. Only about 5% of the total amounts paid for consultant services in the five years reviewed were for consulting (advisory) engagements.

Aside from the perception issue, the most important reason for ensuring that potential engagements are correctly classified is to ensure that City staff use the appropriate procurement method to acquire a consultant. This is particularly important since the threshold for the single source procurement of consultant services is significantly higher than the threshold for acquiring other services. Whereas the acquisition of other services over $5,000

must utilize a competitive bid process, for consultant services, the threshold rises to $100,000. We believe that this inconsistency in thresholds may serve as an incentive to staff, in some cases, to broadly interpret a proposed engagement as a consultant service to avoid the more rigorous and time-consuming competitive process. In our sample, we found a number of assignments that were wrongly classified as consultant services with the result that awards were not made through a competitive process as required.

Given that the majority of consultant services expenditures are paid to consulting engineers, along with the 50% increase in the capital budget since 2004, we believe that the City should conduct a study to evaluate alternative delivery models to use for infrastructure development and renewal projects. The current model for service delivery reflects a 1973 Council decision to contract out a significant portion of engineering work on a project basis. It may be the case that some work could be performed more cost-effectively with internal resources. On the other hand, models such as Private-Public Partnerships (P3s) and Special-Operating Agencies (SOAs) that have evolved in recent years are worthy of consideration, in our view, as alternative methods for resourcing projects.

We were also interested in whether contracting with a consultant was a good business decision in all cases. In this regard, we found that the Public Works Department has not issued a competitive bid for streets work in the last three years, making it difficult for the department to demonstrate that it is paying market rates for contracted services. Furthermore, while the Association of Professional Engineers and Geoscientists of the Province of Manitoba (APEGM) recommends compensation based upon an hourly billing rate, Public Works bases fees for these consultants on a percentage of construction cost. In addition, in 2004, the fees were increased from 12-14% to 13-15% of construction costs without a supporting analysis. In the past the department was confident that the fees charged were reasonable based upon the experience of their professional engineers, and a relatively stable construction market. The market today, however, is more volatile. Since the cost of raw materials is rising, fees for consulting engineers will continue to escalate if the percentage of construction cost method is used even though the work on a project will remain the same. We have recommended that the basis for compensation be reviewed and monitored.

We also found that decisions to enter into a single source negotiation or directly assign a contract were not adequately documented. These procurement methods can expose the City to higher costs for a project and to challenges from external parties over the fairness of the process. A significant portion of the work performed by consultants is awarded by these methods. We noted that the City's threshold for requiring competitive bids for consultant services is higher than some of the other jurisdictions we surveyed.

We also wanted to determine if current processes protect the City's interests once a department has made a decision to engage a consultant. We found that the City does not have standard contract templates for departments to use when engaging a consultant. This has resulted in more than 70% of our sample not having an adequate contract. In cases where a proper contract did exist, it was not signed by the appropriate authority (usually the Chief Financial Officer) in 60% of the engagements. This jeopardizes the enforceability of the contract, potentially requiring the City to incur additional costs for a court action to settle any disputes. Moreover, the City did not always ensure that consultants carry adequate insurance to indemnify the City, exposing the City to significant financial risk in some instances. We recommended that a set of standard consultant contracts be developed, which

include requirements for indemnification by consultants. We also recommended that signing authority be more closely aligned with award authority to relieve the burden on the Chief Financial Officer.

In terms of contract management practices, we found that departments did not consistently monitor performance or review and document results. Without this critical information, departments cannot demonstrate that the City has received the expected benefits from a consulting assignment. Yet, in most cases, staff were able to articulate benefits received when prompted. In addition, performance issues that are not identified and resolved may re-occur on future engagements. We recommended that Corporate Finance develop a template for departmental staff to use to document the performance of the consultant and the results achieved upon completion of a project.

We also found that the lack of a detective control in the accounts payable process resulted in a failure to identify input errors relating to GST rebates and assessments. In one example, the City missed a GST rebate of $11,077 over two years; in another case, the City failed to self-assess GST in the amount of $13,712 for which the City could have been fined almost $8,000. Of the 22 transactions we reviewed, 6 contained input errors.

Finally, we wanted to determine whether the quality of information available to senior management and Council on the use of consultants is sufficient. We found that the quarterly reports on the use of consultants that we reviewed contained inaccurate and misleading information. Payments were included that did not fall within the definition of consultant services. It was not possible to determine the volume or magnitude of all consultant services contracts awarded. Departments are only required to include contracts that were single sourced (although most included all contracts awarded) and only contracts where payments had been made during the period. New contracts awarded during the quarter were not included. We have suggested that additional information be included to make quarterly reports more meaningful, complete and transparent for decision-makers and the public.

In a period of constraint, the allocation of public funds to external consultants is subject to keen scrutiny. Contrary to popular perception, we found that the majority of funds spent on consultant services produced tangible results. At the same time, we concluded that more diligence is required to enable the City to demonstrate that processes and practices related to the use of consultants are fair and transparent and result in anticipated benefits at a reasonable cost.

## Mandate of the City Auditor

The City Auditor is a statutory officer appointed by City Council under the *City of Winnipeg Charter*. The City Auditor reports to Council through the Audit Committee (Executive Policy Committee) and is independent of the City Administration. The City Auditor conducts examinations of the operations of the City and its affiliated bodies to assist Council in its governance role of ensuring Civic Administration's accountability for the quality of stewardship over public funds and for the achievement of value for money in City operations. Once an audit report has been communicated to Council, it becomes a public document.

## Audit Background

The procurement of goods and services is a high profile and sensitive public process, complex in nature. The City annually spends approximately $200 million on goods and services. Over the last decade, the City has downsized its labour force, supplementing its permanent resources by contracting for external resources. In 2000, the City spent approximately $18 million on consultant services; by 2004 that number had grown to $39 million.

We recommended an audit of procurement and contract administration in our *2004-2006 Audit Plan*, which was communicated to Audit Committee in September 2004. We have divided this audit into distinct projects, with the first part being an audit of the use of consultants.

## Audit Objectives

The objectives of the audit are as follows:

- To determine whether the risks associated with the use of consultants have been adequately identified and mitigated.
- To determine whether consultant services contracts were awarded in a fair and open manner at a reasonable cost.
- To evaluate whether the deliverables of the consultants' contracts met the original expectations of quality, price and timeliness.

## Audit Approach

We performed several activities during this audit:

- We conducted interviews and discussions with key people associated with the consultant services contracting process to gain an understanding of the process, the roles and responsibilities of specific positions, and to identify potential issues or areas of focus for the fieldwork phase of the review.

- We reviewed reports, manuals, plans, policies, procedures and other relevant background documentation related to the use of consultants and procurement and contract administration.

- We surveyed other jurisdictions to ascertain how those jurisdictions engage and manage consultants.

- We determined the most significant risks that could potentially impact the achievement of business objectives.

- We drew a sample of consultant service contracts to review and evaluated them against criteria that we developed based upon the policies and procedures guiding the engagement and management of consultants in the City of Winnipeg.

We have conducted the audit in accordance with generally accepted auditing standards. In preparing our report, we have relied upon extensive interviews and information, data, and other documentary evidence provided to us. We based our conclusions upon information available at the time. In the event that significant information is brought to our attention after completion of the audit, we reserve the right to amend the conclusions reached. (See **Appendix 1** for a flowchart of the audit process.)

# Audit Conclusions

The audit work we performed led us to the following conclusions:

- All significant risks associated with the use of consultants were not identified and, therefore, not mitigated effectively. We have identified several areas throughout the process where controls need to be improved.

- The majority of consultant services contracts in our sample were under $100,000 and awarded through a single source negotiation process as permitted by the *Directive*. We observed, however, that departmental staff were unable to support the basis for the award for the majority of contracts in our sample. Therefore, we were unable to conclude that the contracts were awarded in a fair and open manner. In the absence of a competitive bid process, we were also unable to conclude that all consultant services were acquired at a reasonable price due to the lack of supporting cost information.

- We were unable to conclude that the deliverables arising from a consultant services contract met expectations, in some instances, due to inadequate project documentation and performance monitoring.

# Acknowledgement

The Audit Department wants to extend its appreciation to the management and staff from all City departments who participated in the review and, in particular, the managers and staff of the Corporate Finance Department.

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# Overview of the Process to Contract with a Consultant

The City of Winnipeg has three key documents that govern the procurement of consultant services:

- the *Agreement on Internal Trade,*
- the *Council Policy – Materials Management Policy, and*
- the *Administrative Directive - Materials Management Policy.*

The *Agreement on Internal Trade (AIT)* is an inter-provincial agreement that specifies rules that apply to the purchase of various goods and services, including professionals. The *AIT* divides professionals into two groups; AIT professionals and non AIT professionals. AIT professionals are defined as having a provincially or nationally recognized accreditation to have the right to practice in such a field. These professionals are limited to the following:

- Medical doctors
- Dentists
- Nurses
- Pharmacists
- Veterinarians
- Engineers
- Land surveyors
- Architects
- Accountants
- Lawyers
- Notaries

Any other professional hired by the City as a consultant would be considered a non AIT professional. This group is defined as being trained and skilled in the theoretic or scientific parts of a trade or occupation as opposed to merely performing the mechanical functions. Such professionals include the following:

- Information technology consultants
- Management consultants
- Training consultants
- Real estate appraisers
- Dieticians
- Interior designers
- Occupational therapists

The *Council Policy – Materials Management Policy* (the *Policy*) governs the City's materials management functions. The guiding principles of the *Policy* are noted below:

- The City's needs must be met in an effective and efficient manner.
- The taxpayers of the City are entitled to the best value for their taxes.
- All businesses are entitled to fair and ethical treatment.

The *Policy* provides guidance on ethical standards, criteria for when a supply may be made without the solicitation of competitive offers and the process to suspend or debar a vendor from entering into future business dealings with the City.

The *Administrative Directive - Materials Management Policy (*the *Directive)* defines delegations of authority and provides guidelines for determining the award authority and signing authority as well as the procedures for soliciting and evaluating competitive offers. While there are several appendices to the *Directive*, Appendix 1 is dedicated to Consultant Services. (See **Appendix 2.**)

Appendix 1 of the *Directive* does not define the term "consultant"; rather, it refers to the different types of professionals defined in the *AIT*. The *Directive* also provides clarification for some non AIT professionals by stating that the provision of a service should be for the purpose of providing advice either on how to do something or on what needs to be done.

Appendix 1 of the *Directive* also includes various general requirements for all consultant services including maintaining a

roster of eligible consultants, conducting performance reviews and the contents of acceptable proposals.

The *Directive* details delegations of authority for City staff to award contracts for consultant services which are as follows:

- Less than $100,000 – all Department Heads.
- Not exceeding $5,000,000 – Chief Financial Officer
- Not exceeding $10,000,000 – Chief Administrative Officer
- Exceeding $10,000,000 – appropriate Standing Committee

A flowchart detailing the process for hiring consultants is detailed in **Appendix 3.** Three potential procurement methods exist: a single source negotiation, a departmentally managed competitive process requiring no less than three bids and a competitive process managed by the Materials Management Branch. In order to determine which procurement process to follow, departments are required to answer three critical questions.

1. Is the cost estimated to be over $100,000?
2. Will they be hiring an AIT professional?
3. Is the work major or complex?

Depending upon how each of these questions is answered, the department may enter into either a single source negotiation or one of the competitive processes. An exception to the competitive bid process is also permitted upon approval of the appropriate award authority.

Regardless of the process required to hire the consultant, the department must prepare a cost basis for the payment that is in line with industry standards and must prepare an award report if the value of the contract is over $100,000. Legal Services and Materials Management must approve this report before the department submits it to the appropriate award authority.

The *Directive* also requires departments to submit a quarterly report on consultant services to the Chief Financial Officer. The report is to include the name of the consultant, the type of work performed and the total payments made during the quarter. The CFO forwards these reports to Council.

## Financial Significance of Consultant Services

The following table highlights the total dollar value paid to consultants and an estimate of the number of contracts for the years 2000 to 2004.

| Year | Total dollars paid to consultants | Estimated number of contracts [1] |
|---|---|---|
| 2000 | $18,101,908 | 237 |
| 2001 | $16,734,762 | 249 |
| 2002 | $20,023,958 | 248 |
| 2003 | $20,519,997 | 242 |
| 2004 | $39,531,189 | 270 |

Note 1: Due to the method of reporting, the dollars reported could have been for one contract or for multiple contracts. We employed a conservative approach and assumed each reported amount was for a single contract.

The significant increase in dollars spent on consultants in 2004 is due to expenditures for a few large infrastructure projects such as the construction of a water treatment plant. **Appendix 4** displays a detailed breakdown of the dollars paid to consultants and the estimated number of contracts by department.

# Key Risks and Impacts Associated with the Use of Consultants

We used a risk-based approach to perform this audit. This approach involved understanding the reasons why the City contracts with consultants and then looking at the processes in place to support departments. We assessed the key potential risks associated with contracting with a consultant and the resulting impacts to the City.

Risk is defined as any circumstance or event that has an impact on the achievement of business objectives. Accordingly, risk can be either a threat or an opportunity. The failure to seize an opportunity can negatively impact the achievement of business objectives.

The key sources of risk associated with the use of consultants are

- the lack of a clear understanding of what type of engagements constitute a consultant service;
- the lack of processes in place to ensure that contracting for an external consultant is the most appropriate decision for the organization;
- adopting processes to hire consultants that are not fair, objective or transparent;
- using a contract that does not adequately protect the interests of the City;
- inadequate management of the consultant and contract; and
- inadequate reporting of accurate and sufficient information to Council regarding the use of consultants.

The most significant negative impacts that the City may realize when contracting with consultants are

- wasted financial resources because of a failure to obtain a competitive price for the consultant services;
- insurance and/or legal costs incurred in defence of a claim resulting from a poor contract;
- a loss of productivity because consultants often require the participation of City staff, which detracts from time focused on supporting the delivery of public services;
- ineffective knowledge transfer when a consultant's deliverable does not enable the City to implement the key recommendations;
- poor advice that has negative impacts on City programs and services; and
- insufficient reporting of information to Council resulting in its inability to adequately perform its oversight responsibility.

# Overview of the Sampling Process

Initially, we reviewed journal entries from the general ledger to obtain the population of data for our review. We found, however that data contained in the general ledger account that captured payments made to consultants also inappropriately included payments for such things as office supplies and coffee services. For our purposes, extracting the data we required would have been too time consuming. We then looked to using the quarterly consultant activity reports that departments submit to the CFO. These reports generally capture cash payments made during the period for all types of consultant services but, in some instances, capture the amount of the contract award. We observed several deficiencies in the quarterly report that limited our ability to identify trends and generate information that we could have used to evaluate performance.
Some of the key limitations of the quarterly report information included the following:

- Prior to the implementation of the Peoplesoft system, departments could make a direct payment to a consultant, which could have gone undetected and unreported.
- Many departments included payments that were not for consultants due, in part, to a lack of understanding as to what constitutes a consultant assignment.
- The information reported does not include the type of firm or the nature of the consulting assignment or the number of contracts or projects the consultant worked on.
- The reports are not required to contain information on new contracts awarded during the quarter that would signal the magnitude of a consultant's project.

Despite these limitations, the quarterly reports were the best source of data on which to base our audit fieldwork. We obtained quarterly reports for the years 2000 through to 2004. We used this period to allow departments time to have implemented recommendations from their consultants.

The quarterly reports are only required to capture consultant services acquired by the department under its delegated authority to single source. We identified, however, that departments included payments for contracts that were awarded through a competitive process, solicited through Materials Management Branch, or approved by Council.

We sorted the consultant services contracts into three categories for the purpose of selecting our audit sample. These categories reflect important differences in award authority levels and our assessment of what would constitute a major project. These three categories of consultant services contracts are

- Up to $100,000 – Award authority is delegated to Department Heads at this level and the majority of contracts in this range could be sole sourced.
- $100,001 to $1,000,000 – Contracts in this range are a combination of single source negotiation and awarded through a competitive process. The award authority is the CFO.
- Greater than $1,000,000 – We considered contracts above this level to be major projects. A competitive process would award the majority of contracts in this range. The award authority would be the Administration for lower levels and the appropriate Standing Committee for higher amounts.

The following table illustrates the total value of consultant contracts for the period 2000 to 2004 according to our categories:

| Dollar Range | Total value of consultant contracts | Total number of contracts |
|---|---|---|
| < $100,000 | $17,018,224 | 1106 |
| $100,000 - $1 Million | $36,412,054 | 121 |
| >$1 Million | $61,481,536 | 19 |
| Total | $114,911,814 | 1246 |

The breakdown by category of the sample of contracts selected for further examination is detailed in the table below:

| Dollar Range | Number of contracts selected | % of total | Dollar value of sample | % of total |
|---|---|---|---|---|
| < $100,000 | 20 | 2% | $799,816 | 5% |
| $100,000 - $1 Million | 15 | 13% | $3,595,339 | 10% |
| > $1 Million | 3 | 16% | $13,575,631 | 22% |

We selected a larger number of contracts at the lower contract amounts because more activity was evident at this level over the 2000 to 2004 period. However, as the value of the contract increased, we selected a higher percentage of the total activity, both in terms of volume and value of the contracts. We believe that this was appropriate because the financial exposure of the City typically increases with the value of the contract. We based the number of contracts selected from each department on the relative number of contracts reported for the period.

We selected the specific consultant services contracts through a manual, random process. Since the sample was based upon judgment, we were unable to extrapolate our observations to the population of contracts. We were able, however, to identify issues for further review.

# Observations and Recommendations

The City of Winnipeg's use of consultants is open to scrutiny from a variety of sources. Politicians, citizens, other stakeholders and even competing firms will often question the necessity to hire a consultant or the process used for a specific engagement. In relation to the City's process for contracting with consultants and the specific engagements reviewed, we wanted to answer the following questions:

1. Is the type of engagement that constitutes a consultant service clear to City staff and decision-makers?
2. Does the City have procedures in place to ensure that contracting for an external consultant is the most appropriate business decision?
3. Is the process to engage a consultant open, fair and transparent?
4. Are the City's interests adequately protected when a consultant is engaged?
5. Are the contract management practices of departments adequate?
6. Do the quarterly financial reports on consulting activity provide accurate, meaningful and sufficient information to Council?

Affirmative answers to each of these questions would have allowed us to conclude that the processes in place supported the principles of the City's *Materials Management Policy*. In fact, we observed several deficiencies that require improvement. These are discussed below under the relevant questions.

## Is the type of engagement that constitutes a consultant service clear to City staff and decision-makers?

***The type of engagement that constitutes a consultant service was not clear to all staff and decision-makers.***
It is a commonly held belief on the part of some members of the public and decision-makers that the City has expended significant monies to obtain the advice of external consultants. There is a frequent reference to consultant reports that "gather dust on the shelf". The implication is that the work provided is not value-added and that, in some cases, should have been performed by internal staff. In fact, the term "consultant services" as described in the *Directive* covers a broader range of services than simply "consulting".

The *Directive* uses the categories of professionals defined in the *Agreement on Internal Trade (AIT*) to identify the consultant services that fall within the purview of the policy. The *Directive* goes on to specify that a consultant whose services fall within its purview must provide advice rather than the performance of a service. For example, an AIT professional engineer can provide engineering services that extend to the design of a bridge as well as act as the contract administrator for a bridge project but cannot extend services to include building the bridge. For non AIT professionals, an IT consultant, for example, can provide advice on the technical aspects of a new computer system but cannot supply the components.

In fact, AIT professionals, specifically engineers, comprise a significant portion of all consultant services activity at the City. This is illustrated in the table below:

| Year | Quarterly Report Total | Consulting engineer | % of Quarterly Report Total |
|---|---|---|---|
| 2000 | $18,101,908 | $10,701,173 | 59% |
| 2001 | $16,734,762 | $12,474,589 | 75% |
| 2002 | $20,023,958 | $14,959,852 | 75% |
| 2003 | $20,519,997 | $12,751,551 | 62% |
| 2004 | $39,531,189 | $32,240,648 | 82% |

Overall, approximately 72% of consultant services expenditures were paid to consulting engineers and were related to the planning, design and contract administration work for various City capital projects. The City does not have the capacity to handle these projects with internal staff. These services result in infrastructure development, rather than advice and recommendations that may or may not be implemented.

At the same time, it was clear from our review that City staff did not always make the required distinction between consultants who provide advice and contractors who provide direct services. The latter do not fall within the purview of Appendix 1 of the *Directive*. We noted many assignments that extended beyond advice to performance or the supply of goods and services. We also observed a number of assignments that fell completely outside of the definition of consultant services. These included payments for contractors, caterers, printers and arbitrators. The table below identifies the total dollars for services that were inappropriately reported as consultant services:

| Year | Quarterly Report Total | Contractor Assignments (includes IT) | Other and Misclassified | Combined % of Quarterly Report Total |
|---|---|---|---|---|
| 2000 | $18,101,908 | $2,153,109 | $44,482 | 12% |
| 2001 | $16,734,762 | $1,068,838 | $29,376 | 7% |
| 2002 | $20,023,958 | $1,299,162 | $69,998 | 7% |
| 2003 | $20,519,997 | $1,505,289 | $94,673 | 8% |
| 2004 | $39,531,189 | $1,161,764 | $118,862 | 3% |

We found it interesting that the total amount spent on consultants who provided advice only (unrelated to a capital project) represented, in fact, a very small portion of the overall expenditure. This is illustrated in the following table:

| Year | Quarterly Report Total | Consulting | % of Quarterly Report Total |
|---|---|---|---|
| 2000 | $18,101,908 | $1,099,416 | 6% |
| 2001 | $16,734,762 | $913,935 | 5% |
| 2002 | $20,023,958 | $628,902 | 3% |
| 2003 | $20,519,997 | $1,032,942 | 5% |
| 2004 | $39,531,189 | $2,172,576 | 5% |

Aside from the issue of perception, the most significant impact of misclassifying consultant activity is the use of an inappropriate procurement process to acquire the service. The *Directive* permits departments to enter into a single source negotiation for consultant services within certain limits. These limits are highlighted in the table below:

| | All Departments |
|---|---|
| Consultant Services - AIT or Non-AIT Professional | $100,000 |
| Contractor | $5,000 |
| Goods | $5,000 |

Contracts awarded by a single source negotiation can exceed the above-mentioned limits if they are approved by the proper award authority, which is typically the CFO. The threshold for requiring a competitive bid process for consultant services is significantly higher than the $5,000 limit for other goods and services.

We noted that while other jurisdictions also allow for single source negotiations for consultant services, they have imposed lower limits. For example, Toronto and Ottawa have imposed a $25,000 and $50,000 threshold, respectively, for awards issued through a single source negotiation. Edmonton has imposed a $100,000 limit for all single source negotiations.

The inconsistency with respect to the threshold for procuring consultant services and other goods and services has created, in some instances, an incentive to classify projects as consultant services in order to utilize the less rigorous and less costly single source negotiation process. In fact, we found 5 instances in our sample of 40 (13%) where non-consultant services were single sourced in violation of the *Directive*.

***Recommendation 1***
*We recommend that Corporate Finance Department continue to ensure that all staff involved in the procurement process have a clear understanding of what constitutes a consultant service and the appropriate procurement method that must be employed when services fall outside of the definition of consultant services.*

***Management Response***
*Materials Management Division will continue to provide training to individual departments, as requested, and through internal courses, to employees who are providing service in the procurement area. Additional attention will be given to incorporating the intent of this recommendation in the training sessions.*

*Plans are in progress to expand the scope of this training to deal more explicitly with the procurement process and contract administration, including consulting assignments. In addition, other opportunities to train employees will be explored.*

## Does the City have procedures in place to ensure that contracting for an external consultant is the most appropriate business decision?

On an annual basis, City Council assigns a significant level of financial resources to the capital budget to improve infrastructure. The Administration must ensure that the most appropriate delivery model is used and that the resulting contracts for consultant services are competitive and in line with industry standards.

***An analysis should be conducted to determine the most appropriate delivery model, or combination of models, that should be used for infrastructure projects.***
In 2004, the adopted capital budget contained projects totalling about $205 million. In February 2006, City Council adopted the 2006 capital budget which totalled approximately $307 million, equating to an increased commitment to capital projects of 50% in just two years. Due to the magnitude of this shift in the level of funding, we believe that the City should review the model it uses to undertake capital projects. At present, the City contracts out a significant portion of the work required to complete capital projects. There are several reasons why work is contracted out including flexibility in resources, reduced labour costs and transferring risk to external firms. A contributing reason would also be a 1973 decision by City Council to assign the bulk of the City's design and engineering work to external consultants.

The current size of the City's corps of engineers reflects that decision. Internally, the City does not have the capacity to complete all of the identified capital projects. Since that 1973 decision, a variety of different models have evolved to assist governments in undertaking infrastructure projects. Some examples of the potential models include the following:

- expanding the internal capacity to undertake capital projects;
- creating a special operating agency governed by an appropriate mandate; and
- entering into a private-public partnership.

In reference to the first model, expanding internal capacity, we obtained a preliminary analysis performed in 2000 by staff in the

Public Works Department which concluded that performing certain functions in-house may provide the City with cost savings. We noted that the analysis was of limited scope and not applicable to all types of capital projects.

Special operating agencies (SOA) are service delivery units that are designed to provide greater freedom from administrative processes in exchange for a service-oriented delivery approach. In November 2005, for example, the Province of Ontario created an arms-length agency that is responsible for the project and contract management of complex infrastructure projects. The first of five SOAs in the City was created in 2000. Several other initiatives have been identified as potential candidates for an SOA; however, we are not aware of any initiative that focuses on aspects of capital project completion.

A private-public partnership (P3) has been used in the City in the past and resulted in development of the Charleswood Bridge. At least five Canadian provinces and numerous countries worldwide have used this model to develop a variety of infrastructure projects. The relationship between the private and public sector in a P3 can take a variety of forms ranging from a contracted out service to a sharing of expertise and a transferring of risk to the partner best suited to manage or mitigate that risk.

We are not advocating any one model over another; rather, we are suggesting that now may be an opportune time to analyze which model, or combination of models, best suits the City of Winnipeg. The significant increase in capital funding should prompt the City to ensure that the most appropriate delivery model is used to develop infrastructure. The status quo is only one option. To date we do not believe that an adequate analysis has been undertaken. We understand that Public Works has been tasked to undertake a study of alternative delivery models for infrastructure renewal.

***Recommendation 2***
*We recommend that the Public Works Department, in conjunction with other departments that are involved in capital projects, undertake a study of alternative delivery models for infrastructure development and renewal.*

***Management Response***
*The Public Works Department agrees with this recommendation and is committed to working with other City departments to fully explore options with respect to alternative service delivery. The Public Works Department is currently exploring the potential use of Private-Public Partnerships as an alternative service delivery method for large capital projects anticipated in the near future.*

*The Public Works Department will undertake an updated review of its in-house engineering services and related costing to determine suitability for possible expansion or any other variance from current practices.*

***Public Works could not demonstrate that the basis of compensation for consulting engineers who perform streets work was competitive and consistent with industry standards.***
The approved 2006 capital budget for contracted streets work is approximately $32 million. Although the exact amount of fees paid is dependant upon the scope of the project, the estimated fees to be paid to consulting engineers for streets work in 2006 is between $3.1 – 3.6 million.

Capital projects related to streets work are directly assigned to pre-qualified engineering firms. The assignment is predicated on an acceptable proposal in regards to the total project costs. Consulting engineers are compensated for their services within a pre-determined range based upon a percentage of construction costs. The range varies from 13 – 15% depending upon the nature of the assignment. This amount was increased from 12 – 14% in 2004.

The concern that we have is that there is no direct correlation between the cost of construction and the services provided by consulting engineers. Construction costs are comprised of fuel, steel, concrete, construction labour, etc. The amount of time expended on a particular project by the consulting engineer is not directly related to the underlying cost of the materials. While we were advised that there was considerable discussion regarding the most recent increase, there was no documented, objective analysis to support either the increase or the original fee range. Furthermore, a competitive bid process has not been initiated in the past three years to submit the reasonableness of the fees proposed to an objective test.

We agree with the department that direct assignment with a percentage basis for compensation is an efficient and cost-effective methodology to use for straight forward, well understood projects so long as the percentage translates into reasonable fees. In the past, the department was confident that this was the case because of the experience of their project managers and the general stability of the construction market. Based upon the nature and scope of the work, the type of staff to be assigned, and their own knowledge of industry pay schedules, project managers were comfortable that the fees proposed were reasonable.

In the current environment, however, the reality is that the City is facing significant increases in construction costs. If the percentage of construction cost method is used in times of rising raw material costs, increases in the construction costs of a capital project will increase the fees paid to consulting engineers proportionately even though there may be no direct impact on the time required to manage the project. In recognition of this risk, some other organizations are using an hourly rate basis of compensation and/or a competitive bidding process. Furthermore, we noted that the Association of Professional Engineers and Geoscientists of the Province of Manitoba (APEGM) recommends using a time based hourly billing rate in its draft policy (dated 2003). In fact, APEGM recommends against using the percentage of cost of construction basis for resident engineer services.

Going forward, we believe that the Department needs to be able to objectively demonstrate that the basis for compensating consulting engineers is the most cost-effective for the City. This can be accomplished through such means as the design of the compensation structure, better documentation of analyses performed, and/or the periodic use of a competitive process.

***Recommendation 3***

*We recommend that the Public Works Department review and monitor the basis for compensating consulting engineers who perform streets work to ensure that it is appropriate in the current environment and for the future. Analyses performed should be appropriately documented. In addition, we recommend that, on an annual basis, some contracts for consultant services related to streets work be subjected to a competitive bid process.*

***Management Response***

*The Public Works Department agrees with the need to objectively demonstrate and document value for money spent on consulting engineering services. Given the current volatility of costs in the construction sector and potential impacts to consulting fees, the Public Works Department will continue to review and monitor the basis for compensating consulting engineers.*

*In fact, in anticipation of construction cost increases, PWD addressed the issue of engineering consulting fees potentially increasing disproportionately by instituting a 10% upset limit on consultant fees for 2006 and beyond.*

*To clearly demonstrate the efficiency and cost-effectiveness of the current basis for compensation for straight forward well understood street projects, the Public Works Department will utilize annually, for some contracts, similar request for proposal methodologies for engaging consulting engineering firms to those used by other jurisdictions, where appropriate, and as currently used on larger and/or more complex Public Works Department projects.*

## Is the process to hire a consultant open, fair and transparent?

A guiding principle of the *City of Winnipeg Council Policy on Materials Management* is that *"all businesses are entitled to fair and ethical treatment."* To accomplish this goal, the City must have a process that is consistently applied across all departments and ensures that business decisions are supported in an objective and rational manner.

***The terminology "major or complex" requires additional guidance to ensure that the appropriate procurement method is utilized.***

A critical decision point in the process in contracting for consultant services depends upon a department's assessment of whether an engagement will be major or complex. This assessment determines the procurement method that must be used. The *Directive* provides no guidance or criteria for deciding whether a project should be considered major or complex.

City staff advised us that the inclusion of the major/complex decision point attempts to balance internal procurement efficiency with accessibility for all qualified vendors. The Manager of Materials also observed that defining a project as major would be unique to each department and dependent upon the scope of the project in relation to its normal activities. In regard to complexity, the risk associated with the project should be a key criterion. She advised that this additional clarification is available to City staff upon request.

Through interviews pertaining to our sample of contracts, we observed that City staff communicated significantly different opinions as to what work qualifies as major or complex. For example, some staff believed that any work performed by a specialist, such as an actuary, should be considered complex regardless of the risk associated with the project. We also observed that some departments were unaware that the criterion of major or complex is a decision point as to which method of procurement is to be used. As a result, we noted that some assignments that City staff described as were major or complex had been awarded through a single source negotiation in breach of the *Directive*.

***Recommendation 4***

*We recommend that the CFO draft an amendment to the Directive, for the consideration of the CAO, that provides guidance for departments in determining whether the proposed work qualifies as major or complex.*

***Management Response***

*These guidelines will be developed and an amendment to Administrative Directive FM-002 will be drafted for the CAO's consideration.*

***Decisions to enter into single source negotiation or direct assignment were not adequately documented.***

The majority of consultant services in our sample, 31 out of 40 (78%), were procured through a single source negotiation. The *Directive* provides guidance on the information required to support a decision to single source. The cost basis for the payment must be determined and be consistent with industry standards. Furthermore, consideration must be given to factors outlined that include qualifications, experience, past performance, understanding of the project, and the

capacity to accomplish the work within the required timeframe.

Single source negotiations allow for a more streamlined administrative procurement process but potentially introduce new risks to the process. When not procuring services through a competitive bid process, it becomes more difficult for the City to demonstrate that all vendors have been treated fairly and that services were procured at the best price. Due to its potentially subjective nature, single source decisions make the City susceptible to challenges from vendors regarding unfair treatment. It is for this reason that the City must ensure that adequate documentation is maintained on file to support decisions made.

In our sample, we found that staff had only documented the qualifications and experience of consultants on 42% of the files and provided evidence of a cost basis for the service that was consistent with industry standards on 26% of the files.

The *Directive* also requires that departments maintain a current roster of consultants and evaluate work performed on an annual basis. It stipulates that consideration should be given to ensuring an equitable on-going distribution of direct assignments among the best qualified firms.

In our sample, while we observed that work had been awarded to different consultants, we found only one department and 2 out of 26 (8%) contracts where a formal roster was maintained that included information on the firm's area of expertise, number of staff and summaries of performance evaluations. The other departments advised us that staff relied primarily on knowledge of the industry and firms within the industry to make decisions. These decisions were not formally documented, making it difficult to defend allegations of bias or unfair treatment in the rotation process.

***Recommendation 5***
*We recommend that the CFO ensure that City staff are aware of documentation standards to support decisions to single source or directly assign consultant services work.*

***Management Response***
*Materials Management Division will continue to provide training to individual departments, as requested, and through internal courses, to employees who are providing service in the procurement area. Additional attention will be given to incorporating the intent of this recommendation in the training sessions.*

*Plans are in progress to expand the scope of this training to deal more explicitly with the procurement process and contract administration, including consulting assignments.*

*In addition, other opportunities to train employees will be explored.*

## Are the City's interests adequately protected when a consultant is engaged?

Once a decision has been made to engage a consultant, the City must have a proper process in place to protect its interests. Using an appropriate contract, ensuring that it is signed by the appropriate individual, and obtaining evidence of insurance are three critical components in protecting the City's interests.

***The City does not have standard contract templates available for departments to use when engaging a consultant.***

Contracts are developed to protect the interests of an organization when entering into a business relationship with an external firm. According to the *Directive*, "Legal Services must approve the form of contract for all consultant services contracts." Some departments such as Water and Waste and Public Works have standard contracts that have been vetted through Legal Services to be used for their standard engineering consulting activities. Other departments are expected to contact Legal Services to request assistance in ensuring that the interests of the City are protected. The cities of Edmonton and Toronto (in the process of implementing) have contract templates available on-line for their staff.

As a result, in our sample of consulting assignments, more than 70% of the assignments did not have a proper supporting contract. In the absence of easily accessible contract templates, City staff used a variety of different "contracts" when entering into agreements with consultants. These ranged from a simple authorization letter, referencing a consultant's proposal, to contracts supplied by the consultant. (We noted that an authorization letter may be sufficient in those cases where it is used in conjunction with a bid opportunity document that does contain all relevant terms and conditions.) In addition, 22% of the assignments in our sample had no written contract at all with the consultant.

Ultimately, this means that the City's interests have not been adequately protected. The contract, in conjunction with the supporting bid opportunity document, should contain general terms and conditions in such areas as indemnity, required performance security, liquidated damages and procedures for default or termination. If a consultant is negligent in the execution of the project assigned and the City incurs damages, the existence of a formal, written contract can make the process to recover damages simpler. While the lack of a formal, written contract does not prohibit an organization from recovering damages, the City may have to incur additional legal expenses to attempt to recover the damages in a Court of Law.

***Recommendation 6***

*We recommend that Corporate Finance, through the Materials Management Branch and in consultation with Risk Management Branch and Legal Services, develop a set of standard consultant contracts to be made accessible to staff. Each template should provide the applicable circumstances for use and highlight areas that staff are not allowed to modify.*

***Management Response***

*Materials Management Branch has commenced developing consultant services contract templates. As templates of this nature will not always address all pertinent scenarios, in certain cases, the department will need to consult directly with Legal Services.*

*Materials Management Branch will use future training and other opportunities to educate employees on the availability and use of these templates.*

***Many of the consultant services assignments reviewed did not contain a contract that was signed by the appropriate signing authority.***

The authority to sign contracts awarded pursuant to the *Policy* is set out under *Execution of Documents By-law #7367/99*. Signing authority is granted to the Mayor, City Clerk and CAO. The current CAO has delegated her authority to the CFO. The CFO, in turn, has delegated some of his authority to the Manager of Materials. It should be noted that signing authority is different than award authority. Award authority enables an individual to approve internally a proposed financial obligation. Signing authority, on the other hand,

enables an individual to commit the City to a future financial obligation.

In our sample, we observed that in more than 60% of the assignments the incorrect individual signed the contract. In most of these cases, the proper signing authority was the CFO. We believe that having the CFO as the signing authority for the majority of administrative contracts is not congruent with the reality of the responsibilities of the position. If all departments complied with the procedure as it is presently written, it would represent a significant burden and impede the CFO's ability to perform other functions.

Departmental managers throughout the organization are responsible for hundreds of staff, mission critical systems and expensive facilities and equipment. Delegating some signing authority to departmental managers would provide a balance between internal efficiency and ensuring that an objective senior City official reviews contract proposals prior to them encumbering the City. In Edmonton, Toronto and Ottawa, some signing authority has been delegated to departmental managers and the delegation is linked to delegated award authority.

If the appropriate delegated authority has not signed a contract, enforceability may be at risk. Depending upon the past business relationship with a particular consultant, the City may be reliant on the courts to settle any disputes.

We understand that Legal Services was recently assigned the responsibility for reviewing the signing authorities and the *Execution of Documents By-law.* We were advised that it is Legal's opinion that no revision to the By-law is required. The CAO has authority to further delegate signing authority under the Council Policy.

***Recommendation 7***
*We recommend that the CFO, pursuant to the Execution of Documents By-Law and Materials Management Policy and, in consultation with Legal Services, propose revisions to the delegated signing authorities for documents, instruments and agreements arising from an award of contract for consultant services, for the consideration of the CAO.*

***Management Response***
*The CFO will review present signing authority delegations and propose any recommended changes to the CAO for further consideration.*

***City staff did not always ensure that consultants properly indemnify the City.***
Virtually every consultant hired by the City should be required to indemnify the City against all claims or damages that arise, either directly or indirectly from the performance or failure to perform an agreement. The type of insurance coverage required is dependent upon the specifics of a consultant's assignment.

With proper insurance coverage in place, if consultants were negligent in their advice, in their conduct on City premises or in some other manner, the City would be reasonably assured of the ability to recover damages. Damages covered by insurance would include payment to injured parties and legal fees incurred by the City in defence of a claim. In order to support a claim, it is critical that City staff obtain proof of coverage in the form of a certificate of insurance and maintain that on file.
The absence of proper insurance coverage by a consultant may result in the City being required to pay for any damages. Depending upon circumstances unique to each assignment, damages may be recoverable from the City's own insurance provider. However, the City self-insures for the first $250,000 and any claims against the City's plan that are over this level would impact the amount of the premium paid in the future.

Due, in part, to the lack of formal contracts noted previously, some City staff were unaware of a requirement for consultants to indemnify the City or were unable to provide evidence that a consultant had adequate insurance in place to protect the interests of the City. In our sample of consultant services assignments, 72% did not have any insurance coverage in place and, in a further 12%, the City did not have the necessary certificate of insurance on file. We noted that certain professionals such, as lawyers, accountants or financial advisors are required by their governing organizations to carry such insurance. However, the City should still ensure the consultant is in good standing with his/her professional organization and has maintained his/her appropriate insurance coverage. Other professionals, such as architects, designers and management consultants can opt out of such coverage.

Ensuring consultants have adequate insurance coverage in place prior to initiating any engagement is critical, even for those assignments that appear routine in nature.

***Recommendation 8***
*We recommend that Corporate Finance, through the Risk Management and Materials Management Branches, in consultation with Legal Services, ensure that the standard types of insurance coverage expected of all consultants hired by the City is included in the contract templates.*

*We further recommend that Directive be amended to require City staff to maintain the certificate of insurance on file.*

***Management Response***
*The Corporate Finance Department will coordinate the development of standard criteria for proof of insurance and indemnification for all consulting assignments. Contract templates referred to under Recommendation 6 will consider this. Again, templates may not address every consulting assignment scenario and in these cases, contract administrators will need to consult directly with Risk Management.*

*An amendment to Administrative Directive FM-002 to ensure contract administrators obtain insurance certificates will be developed for the CAO's consideration.*

*Future training sessions and other opportunities will be utilized to educate employees.*

## Are the contract management practices of departments adequate?

***Gaps in City processes resulted in the City not properly recovering GST fees charged by some consultants and a potential liability for GST.***
The City is entitled to a rebate of a portion of the GST paid on purchased goods and services (4% to 7% of the purchase price). The GST rebate amount must be recorded in the appropriate general ledger account for the correct amount to ensure that the City receives the full GST rebate to which it is entitled. The City is also required to self-assess GST for imported goods and services. Failure to self-assess could result in the City being fined.

Each department controller is responsible for ensuring the accuracy of the information of the data entered into the PeopleSoft system. Due to the volume of accounts payable transactions that occur, it is not practical for the controller to verify the accuracy of all transactions. However, we also found that there was a lack of a detective control to identify transactions that have no GST recorded, exposing the City to financial risk.

From our original sample of consultant service assignments we found examples of input errors. We then conducted further audit work by selecting a sample of 22 transactions from a listing of transactions

where GST had not been recorded. We reviewed those transactions to ensure that GST was correctly recorded in the general ledger and in compliance with GST legislation. We found that 6 out of 22 transactions reviewed (27%) contained input errors, where there was either a failure to recover the refundable portion of the GST or a failure to pay the City's portion of GST on services received. In one instance, the City missed GST rebates amounting to $11,077.41 over two years. In another example, the City failed to self-assess $13,712.30 in GST for which the City could have been fined $7,835.60.

***Recommendation 9***
*We recommend that the Corporate Controller implement a process to detect and review transactions that have no GST recorded.*

***Management Response***
*The Corporate Finance Department has commenced with a review for unclaimed GST rebates.*

*The Corporate Controller will investigate cost-effective means to detect transactions where no GST has been recorded, so that departments can review the circumstances and implications.*

***Performance monitoring and the review of results were not adequate to demonstrate that the City received the expected benefits for a consultant assignment.***
Performance monitoring is a necessary and critical part of contract management. Its purpose is to provide feedback on quality, timeliness and the progress of the consultant assignment. In addition, it serves to support award decisions made through the single source assignment process and provide information for future procurements. If performance issues with a particular consultant are not identified and documented, problems may go undetected or be repeated in future assignments. During the audit, however, we observed that formal performance reviews were not conducted on the majority of projects sampled although staff did indicate, in some cases, that the performance of the consultant was reviewed informally.

The *Directive* requires departmental staff to conduct performance reviews at least annually for any consultant who has performed an assignment during the preceding year. The reviews are to be communicated to the consultant and maintained on file. However, we noted that the *Directive* does not provide guidance on what aspects of the consultant assignment should be reviewed. In Edmonton, contract administrators are required to complete a standard *"Professional Services Evaluation"* at the end of each project. Ottawa is also in the process of developing a *"Performance Evaluation Matrix"* that will be used at the completion of each project.

The performance review should also attempt to formally document the benefits of the engagement, which could include

- improved client service,
- improved efficiency,
- increased government revenue, or
- improved information for decision-making.

For all consultant services assignments, management should be able to demonstrate what benefits were received and if those benefits met expectations and produced value for money. The rigor of the analysis should be commensurate with the significance and materiality of the project.

For those assignments that involved infrastructure renewal or development, a tangible good exists as evidence of a benefit being received by the City. In the cases where the City engaged a consultant for general advice, departments were often unable to provide objective documentation to demonstrate what benefits the City received from an assignment. Upon further

prompting, however, staff were able to advise that, in the majority of cases, the deliverable provided by the consultant had been, or was in the process of being, implemented.

***Recommendation 10***
*We recommend that Corporate Finance develop a performance evaluation template to supplement the Directive. We suggest that project performance reviews include an assessment of the quality of work performed, the efficiency of the consultant in managing time and resources, the benefits realized, and an analysis of the cost of work in relation to the benefits received. Any outstanding performance issues should also be identified.*

***Management Response***
*The Corporate Finance Department agrees that performance evaluations be conducted for consulting service assignments. While templates are a good idea to support this, and will be developed accordingly, as the report indicates, the "…rigor of the analysis should be commensurate with the significance and materiality of the project." As such, the development of any templates and related instructions will need to communicate this as well. Guidance will be provided to help contract administrators determine the depth of analysis required.*

*Future training sessions and other opportunities will be used to educate employees.*

## Do the quarterly financial reports on consulting activity provide accurate, meaningful and sufficient information to Council?

***Quarterly reports of consultant activity contained inaccurate and misleading information.***
The CFO is required to submit a quarterly report to City Council on the use of consultants. Specifically, the report is intended to keep Council informed "on all uses of the delegated authority to assign work to consultants without the solicitation of competitive offers". Awards made through a competitive bid process are made public at the time of selection. Procurement activity for other goods and services is not included on the report because of the reduced risk associated with the significantly lower threshold to single source an award. A competitive bid process is required for all other goods and services above $5,000 unless prior approval is obtained from the appropriate award authority.

As previously discussed, the reports that are currently being forwarded to Council include a mixture of consultant services assignments that were single sourced, assignments that were awarded through a competitive process and a variety of other payments and awards that are outside the scope of the *Directive* on consultant services. We believe that the intent of the report is to provide full disclosure on all significant consultant services assignments. Payments made that are not subject to the requirements of the *Directive* on consultant services should not appear on the report. At the same time, it is our view that there is merit in including all consultant services engagements (single source and competitive bid) on the quarterly report to provide more meaningful information on the scope of the activity during the quarter and to communicate all consultant services awards to the public in a complete and concise manner.
A recent revision to the *Directive* requires the inclusion of the type of work performed. This is a positive step. At the same time, departments lump all payments to a consultant together, which hinders the ability to see the volume or magnitude of projects underway. We believe that each assignment should be captured separately including the value of projects recently awarded during the quarter.

The benefits to be derived from creating a single reporting mechanism with the additional information noted include

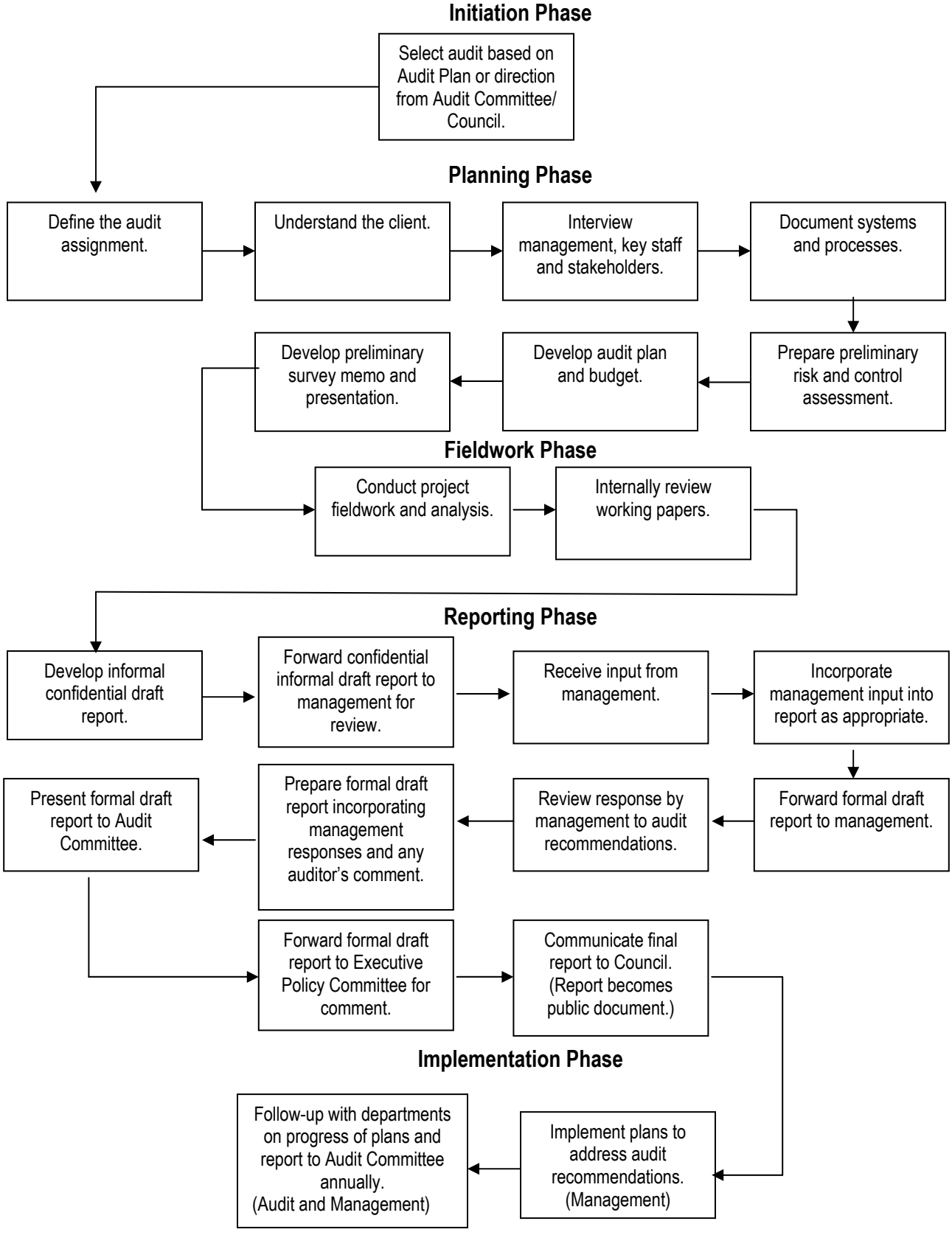
- improved transparency to citizens and interested businesses about the City's procurement activity,
- increased accountability of managers for consultant services engagements, and
- improved clarity for senior management and Council to understand the type and volume of work being undertaken by external professionals and the associated future financial commitments.

***Recommendation 11***
*We recommend that the Directive be revised to require quarterly reports on consultant services activity to include the following:*

- *all consultant services assignments for which payments were made during the quarter,*
- *all contracts awarded during the quarter,*
- *the type of consultant and the purpose of each assignment,*
- *the method by which each assignment was awarded, and*
- *the total payments made to each consultant by project.*

***Management Response***
*Pursuant to this recommendation, the Corporate Finance Department will develop suggested revisions to Administrative Directive FM-002 for consideration by the CAO.*

# Appendix 1 - Audit Process



# Appendix 2 – Administrative Directive FM-002–Appendix 1

***CONSULTANT SERVICES***

NOTE: A contract of employment is not Consultant Services subject to the Materials Management Policy.

Consultant Services subject to the Materials Management Policy are services provided by the following:

1. **AIT Professionals:** (licensed professionals to which the Agreement on Internal Trade (AIT) is not applicable)**:** medical doctors, dentists, nurses, pharmacists, veterinarians, engineers, land surveyors, architects, accountants, lawyers* and notaries.
2. **Non AIT Professionals:** (information technology consultants, communications consultants, management consultants, training consultants, accredited real estate appraisers, agrologists, dieticians, home economists, interior designers, occupational therapists, optometrists, physiotherapists, psychiatric nurses, psychologists, trainers and speech and hearing therapists.

*The City Solicitor must be consulted before a Lawyer is hired.

No other Service shall be deemed to be a Consultant Service without the approval of the Chief Financial Officer.

**AWARD AUTHORITY**

The Chief Administrative Officer has authority to award contracts for Consultant Services as defined in this Appendix, not exceeding ten million dollars ($10,000,000).
The Chief Financial Officer has delegated authority to award contracts for Consultant Services as defined in this Appendix, not exceeding five million dollars ($5,000,000).
Department Heads have delegated authority to award contracts for Consultant Services as defined in this Appendix, not exceeding one hundred thousand dollars ($100,000), and in accordance with the procedures for Award Reports in APPENDIX 4.

**SOLICITATION OF COMPETITIVE OFFERS**

When the cost of the Consultant Services is estimated not to exceed one hundred thousand dollars ($100,000), single source negotiations are permitted unless the work is major and/or complex in which case proposals must be invited from no less than three qualified firms or individuals and evaluated by the review committee.
When the cost of the Consultant Services is estimated to exceed one hundred thousand ($100,000), the following shall apply:

1) **AIT Professionals:** single source negotiations are permitted unless the work is major and/or complex in which case proposals shall be invited from no less than three qualified firms or individuals. Solicitation of Competitive Offers is available through the Materials Management Branch if desired.

2) **NON AIT Professionals:** must be forwarded to the Materials Management Branch for Solicitation of Competitive Offers unless approval has been received for single source negotiations.

**GENERAL REQUIREMENTS FOR ALL CONSULTANT ASSIGNMENTS:**

1) Where services are required as part of a purchase, sale or other transaction, or where the consultant (or someone under his direction), other than a training consultant, will be acting upon his or her own advice, the services shall not be considered to be Consultant Services.
2) All departments hiring consultants shall maintain a current roster showing the credentials of all consultants who perform work for the department, and the credentials of other consultants who have applied to be allowed to perform such work.
3) All consultants shall be eligible to be placed on the roster maintained by the department(s) whose design assignments relate to the consultants' area of expertise.
4) Each department engaging consultants shall, not less frequently than annually, review the performance of each consultant who has performed assignments for the department during the preceding year; shall communicate the results of the review to each consultant; and shall maintain the performance review on file for use when formulating recommendations for assignments.
5) Before any assignment is made by a City department, whether resulting from an invitation for proposal call or from single source negotiations, the cost basis for the payment for the Consultant Services shall be determined and shall be consistent with industry standards and with the Consultant Services received.
6) Departments requiring Consultant Services shall establish a review committee consisting of individuals with the expertise and experience required to evaluate proposals by consultants.
7) All invitations for consultants to submit formal proposals shall include the intended criteria for evaluation of proposals.
8) In those circumstance when no Solicitation of Competitive Offers is required or made, the Assignment for Consultant Services shall be recommended by departments, subject to submission by the designated consultant firm of an acceptable proposal, and taking into account the following factors:

a) the suitability of the qualifications, expertise and related experience of specific consultant staff to be assigned to the project;
b) the adequacy of past performance of the consultant on projects in the City or related engineering projects;
c) the consultant's understanding of the project scope and of City procedures and requirements; and
d) the consultant's capacity to accomplish the work within the required timeframe.
e) Consideration shall be given to ensuring an equitable on-going distribution of direct assignments for City consulting work among the best-qualified firms, based on the size and specialization of the firms.
f) A detailed definition of the scope (terms of reference) of the required Services, and a full description of the proposed project, shall be provided to the designated consultant when direct assignment is contemplated.

**REPORTS TO COUNCIL**

The Chief Administrative Officer, the Chief Financial Officer and the Department Heads shall report quarterly to Council on all uses of the delegated authority to assign work to consultants without the Solicitation of Competitive Offers and make available to Councillors who request it, the annual evaluation of performance report.

**DEFINITIONS FOR CONSULTANTS**

| | |
|---|---|
| AIT Professionals | (licensed professionals to which the Agreement on Internal Trade (AIT) is not applicable): medical doctors, dentists, nurses, pharmacists, veterinarians, engineers, land surveyors, architects, accountants, lawyers* and notaries. |
| Non AIT Professionals | information technology consultants, communications consultants, management consultants, training consultants, accredited real estate appraisers, agrologists, dieticians, home economists, interior designers, occupational therapists, optometrists, physiotherapists, psychiatric nurses, psychologists, trainers and speech and hearing therapists. |
| **Additional Consultant definitions approved by Council. (Non AIT Professionals)** | |
| Management Consultant | Provision of a Service pertaining to advice on organizational structure, governance or senior staff recruitment matters. |
| Information Technology Consultant | Provision of a Service for the purpose of providing advice (i.e., how to do; what needs to be done) on the technical aspects of a City computer system or a component thereof (hardware or software) or on a system, hardware or software that the City may wish to investigate with a view to possible acquisition. |
| Training Consultant | Provision of a Service for the purposes of providing advice (i.e., how to do; what needs to be done) on education, training and instruction. |
| Communications Consultant | Provision of a Service for the purpose of providing advice (i.e., how to do; what needs to be done) on media relations activities and communications strategies. |
| Trainer | A Service provided by a Person giving instruction intended to bring a Person or Persons to a desired standard of efficiency, condition or behaviour. For the purposes of this Directive, “training”, “instruction” and “education” may be considered synonymous. |

**How do I determine what constitutes a Consultant Service?**
As defined in this Appendix, a **Professional Consultant (as defined within AIT)** has a Provincially or Nationally recognized accreditation to have the right to practice in such field.
*Example: A Consultant can provide engineering services to design a new bridge and act as Contract Administrator, but cannot extend that service to include the building of the bridge.*

As defined in this Appendix, a **Professional Consultant (non AIT)** is trained and skilled in the theoretic or scientific parts of a trade or occupation as opposed to merely performing the mechanical functions.
*Example: An IT Consultant provides advice on how to do or what needs to be done (see definitions) on the technical aspects of a City computer system or a component thereof (hardware/software). The Consultant can provide advice, but cannot extend that service to include the supply of hardware/software, conversion of data, etc.*

**What Consultants do I include on my quarterly report to Council?**
The report should include only Consultants that are assigned by the department under the authority delegated to the Director in B1.2 (a) (ii) of this Directive.
Contracts that are not required in the report:

(a) contracts awards resulting from an RFP, solicited through Materials Management;
(b) contracts approved by Council.

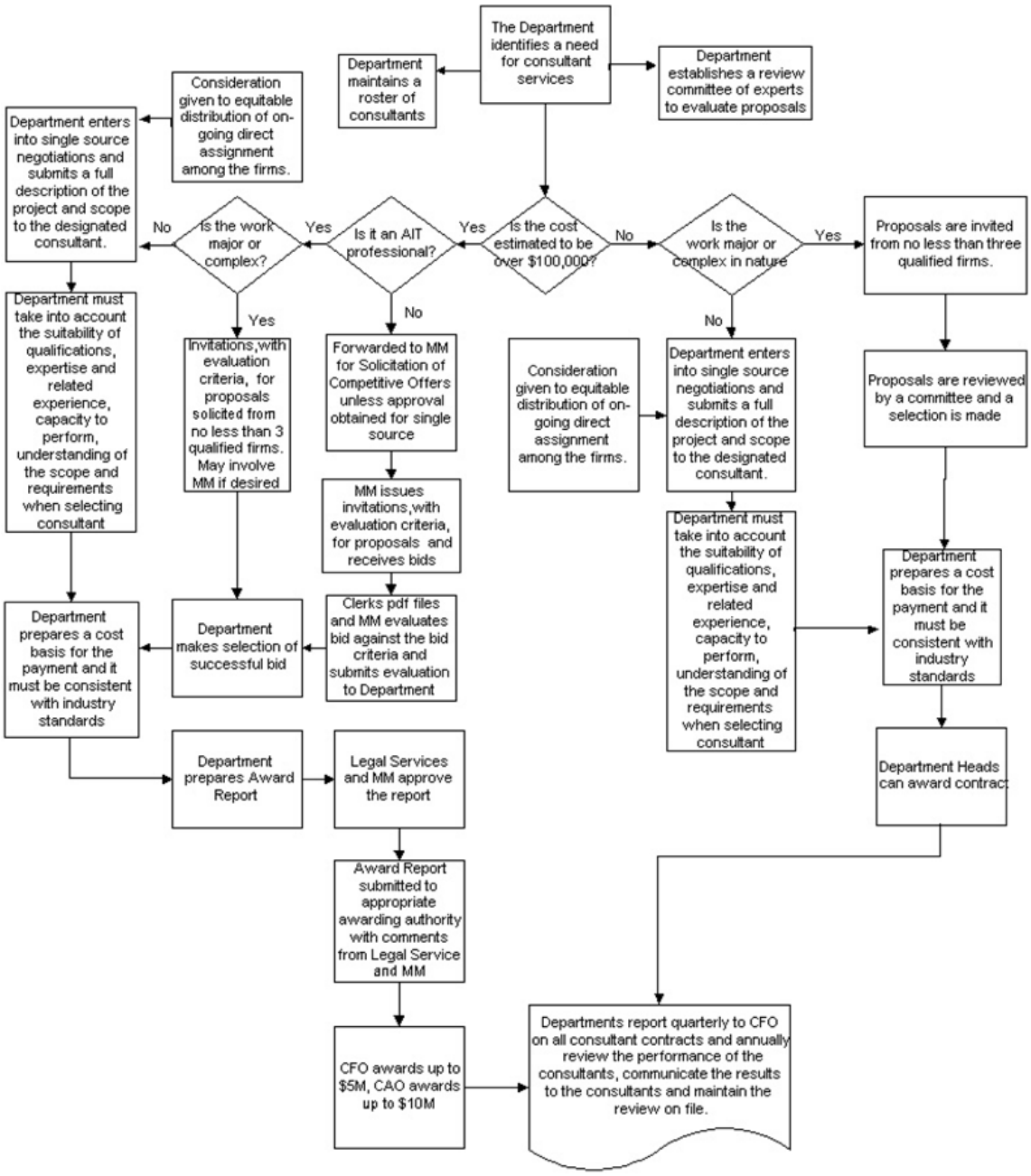
Quarterly reporting should be based on actual cash payments made during the period. Reports should include a column for a description of the type of work performed under the assignment. (*The original instruction was issued in a memo from CFO dated January 13, 1999)*

YOUR DEPARTMENT
REPORT OF CONSULTANT ASSIGNMENTS
January 1, 20XX to December 31, 20XX

| Consultant | Type of Work | Assignments Jan. 1 - Mar. 31 | Assignments Apr. 1 - June 30 | Assignments July 1 - Sept. 30 | Assignments Oct. 1 - Dec. 31 | TOTAL |
|---|---|---|---|---|---|---|

Reports are required to be submitted to the office of the Chief Financial Officer within sixty (60) calendar days of the end of each quarter.

# Appendix 3 – Consultant Contracting Process




AIT Professionals --Licensed professionals to which the Agreement of Internal Trade (AIT) is not applicable -- medical doctors, dentists,nurses, pharmacists, veterinarians,, engineers, land surveyors, architects, accountants, lawyers ( City Solicitor must be consulted) and notaries

Non AIT Professionals -- information technology consultants, communications consultants, management consultants (EPC must be consulted before a management consultant is hired), training consultants, accredited real estate appraisers, agrologists, dietitians, home economists, interior designers, occupational therapists, optometrists, physiotherapists, psychiatric nurses, psychologists, trainers and speech and hearing therapists.

# Appendix 4: Breakdown of the Total Annual Expenditures on Consultant Services and Estimated Number of Contracts

| Department | 2004 | | 2003 | | 2002 | | 2001 | | 2000 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | $ | # | $ | # | $ | # | $ | # | $ | # |
| CAO Secretariat | $85,913 | 8 | $866,242 | 28 | $149,300 | 15 | $157,248 | 15 | $213,762 | 15 |
| City Clerk's | $206,800 | 3 | $86,263 | 1 | $187,966 | 2 | $121,471 | 3 | $0 | 0 |
| Community Services | $303,888 | 8 | $516,074 | 9 | $88,544 | 9 | $216,162 | 12 | $32,428 | 3 |
| Corporate Finance | $189,523 | 17 | $318,047 | 21 | $165,450 | 16 | $231,526 | 26 | $149,780 | 12 |
| CIT | $245,509 | 5 | $561,650 | 5 | $288,593 | 11 | $403,518 | 8 | $0 | 0 |
| Corporate Services | $831,087 | 94 | $690,223 | 73 | $434,222 | 64 | $465,769 | 67 | $929,033 | 86 |
| Fire Paramedic Service | $17,459 | 2 | $94,768 | 4 | $58,946 | 3 | $37,992 | 6 | $6,033 | 1 |
| Planning, Property & Development | $2,311,599 | 61 | $3,426,027 | 47 | $1,669,025 | 46 | $1,745,973 | 56 | $502,240 | 34 |
| Police Service | $23,950 | 3 | $6,000 | 1 | $21,418 | 5 | $8,061 | 3 | $18,138 | 3 |
| Property Assessment | $146,003 | 11 | $196,054 | 12 | $182,759 | 9 | $339,351 | 18 | $623,804 | 23 |
| Public Works | $4,880,739 | 29 | $2,665,108 | 13 | $7,630,524 | 46 | $8,600,071 | 12 | $5,672,325 | 37 |
| Transit | $721,288 | 4 | $362,956 | 4 | $39,309 | 4 | $14,493 | 3 | $58,828 | 2 |
| Water and Waste | $29,567,430 | 25 | $10,730,584 | 24 | $9,107,902 | 18 | $4,393,125 | 20 | $9,895,537 | 21 |
| | | | | | | | | | | |
| Total for all departments | $39,531,189 | 270 | $20,519,997 | 242 | $20,023,958 | 248 | $16,734,762 | 249 | $18,101,908 | 237 |

# Appendix 5: Breakdown of Type of Consultant Services and Expenditures by Year

| | Engineers | Consulting Engineers | Contractors (Includes IT) | Consultant/ Contractor (Professional) | Consulting | Trainer | Other | Misclassified | Total assignments reported for all departments |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |
| Total for type of service 2000 | $3,158,511 | $10,701,173 | $2,153,109 | $865,295 | $1,099,416 | $79,922 | $0 | $44,482 | $18,101,908 |
| Total for type of service 2001 | $680,645 | $12,474,589 | $1,068,838 | $1,478,049 | $913,935 | $89,330 | $6,370 | $23,006 | $16,734,762 |
| Total for type of service 2002 | $981,842 | $14,959,852 | $1,299,162 | $1,973,528 | $628,902 | $110,674 | $3,822 | $66,176 | $20,023,958 |
| Total for type of service 2003 | $1,235,245 | $12,751,551 | $1,505,289 | $3,712,856 | $1,032,942 | $187,441 | $0 | $94,673 | $20,519,997 |
| Total for type of service 2004 | $1,162,184 | $32,240,648 | $1,161,764 | $2,346,374 | $2,172,576 | $328,781 | $0 | $118,862 | $39,531,189 |
| | | | | | | | | | |
| Total for period 2000 to 2004 | $7,218,427 | $83,127,813 | $7,188,162 | $10,376,102 | $5,847,771 | $796,148 | $10,192 | $347,199 | $114,911,814 |

| | |
|---|---|
| Engineers | Engineers who performed only design work. |
| Consulting Engineers | Engineers who did design work and then acted as contract administrator. |
| Contractors | Those that performed work such as research, translation, facilitators, lab services, investigator, and hearing testing. This included IT professionals who provided advice and then acted on the advice. |
| Consultant/Contractor | Consultants where it was difficult to separate their advice from their performance of work. Included professionals such as lawyers, landscape architects and surveyors. |
| Consulting: | Consultants who provided advice only. Included consultants such as medical doctors, psychologists and IT professionals. |
| Trainer | Those that provided either advice on training programs or provided training services. |
| Other | Insufficient information available to determine what type of service. |
| Misclassified | Payments reported in error for such things as food, materials, printing, arbitrators, and court costs. |

# Appendix 6: Summary of Audit Recommendations

As a result of the audit work, we are making eleven recommendations that we believe, once implemented, will improve the value received from consultants services and the quality of information forwarded to Council.

***Recommendation 1***
*We recommend that Corporate Finance Department continue to ensure that all staff involved in the procurement process have a clear understanding of what constitutes a consultant service and the appropriate procurement method that must be employed when services fall outside of the definition of consultant services.*

***Recommendation 2***
*We recommend that the Public Works Department, in conjunction with other departments that are involved in capital projects, undertake a study of alternative delivery models for infrastructure development and renewal.*

***Recommendation 3***
*We recommend that the Public Works Department review and monitor the basis for compensating consulting engineers who perform streets work to ensure that it is appropriate in the current environment and for the future. Analyses performed should be appropriately documented. In addition, we recommend that, on an annual basis, some contracts for consultant services related to streets work be subjected to a competitive bid process.*

***Recommendation 4***
*We recommend that the CFO draft an amendment to the Directive, for the consideration of the CAO, that provides guidance for departments in determining whether the proposed work qualifies as major or complex.*

***Recommendation 5***
*We recommend that the CFO ensure that City staff are aware of documentation standards to support decisions to single source or directly assign consultant services work.*

***Recommendation 6***
*We recommend that Corporate Finance, through the Materials Management Branch and in consultation with Risk Management Branch and Legal Services, develop a set of standard consultant contracts to be made accessible to staff. Each template should provide the applicable circumstances for use and highlight areas that staff are not allowed to modify.*

***Recommendation 7***
*We recommend that the CFO, pursuant to the Execution of Documents By-Law and Materials Management Policy and, in consultation with Legal Services, propose revisions to the delegated signing authorities for documents, instruments and agreements arising from an award of contract for consultant services, for the consideration of the CAO.*

***Recommendation 8***
*We recommend that Corporate Finance, through the Risk Management and Materials Management Branches, in consultation with Legal Services, ensure that the standard types of insurance coverage expected of all consultants hired by the City is included in the contract templates.*

*We further recommend that Directive be amended to require City staff to maintain the certificate of insurance on file.*

***Recommendation 9***
*We recommend that the Corporate Controller implement a process to detect and review transactions that have no GST recorded.*

***Recommendation 10***
*We recommend that Corporate Finance develop a performance evaluation template to supplement the Directive. We suggest that project performance reviews include an assessment of the quality of work performed, the efficiency of the consultant in managing time and resources, the benefits realized, and an analysis of the cost of work in relation to the benefits received. Any outstanding performance issues should also be identified.*

***Recommendation 11***
*We recommend that the Directive be revised to require quarterly reports on consultant services activity to include the following:*

- *all consultant services assignments for which payments were made during the quarter,*
- *all contracts awarded during the quarter,*
- *the type of consultant and the purpose of each assignment,*
- *the method by which each assignment was awarded, and*
- *the total payments made to each consultant by project.*